

## MEMORANDUM OF LAW

DATE: July 19, 1994

TO: Councilmember Judy McCarty

FROM: City Attorney

SUBJECT: Ballot Proposal Concerning Civil Service Changes

In a memorandum dated July 15, 1994, you asked what needed to be done in order to have the Civil Service recommendations contained in the STEP and CHANGE2 reports placed on the November ballot.

Specifically, CHANGE2 made three recommendations directly impacting the Civil Service System of The City of San Diego. Those recommendations are:

1. Require a performance-based compensation system (versus compensation based on longevity) for all employees.
2. Eliminate Civil Service.
3. Require the Director of Personnel to report to the City Manager.

The key STEP recommendations are:

1. Prepare revisions to the City Charter to amend Article VIII, Section 116 and related sections, to have the Personnel Director report to the City Manager and become an integral member of the management team.
2. Prepare revisions to the City Charter to amend Article VIII, Section 115 and related sections, to revise the duties of the Civil Service Commission to only investigation ~~functions~~ and hearing appeals of employee discipline.
3. Place these Charter revisions on the November ballot; if approved, reorganize the human resources functions ~~functions~~ into a single department reporting to the City Manager.

As can be readily seen, the recommendations of STEP and CHANGE2, while similar in some respects, are significantly different in that the Civil Service System will survive to a limited degree under the STEP proposal, but will be entirely eliminated under the CHANGE2 recommendation. Neither concept on its face suffers from a constitutional defect. The Mayor and City Council may place either or both proposals on the ballot once the proper procedural steps are taken and the specific

amendments are drafted. *Hinchcliff v. City of San Diego*, 165 Cal. App. 722 (1985). However, we believe that there is not sufficient time to complete all the necessary procedural steps required to place these measures on the ballot by the City Council meeting of August 1, 1994, which has been designated for that purpose.

The Meyers-Milias-Brown Act (Government Code section 3500 et seq.) specifically requires The City of San Diego to meet and confer in good faith with its recognized employee organizations prior to placing on the ballot a Charter amendment concerning terms and conditions of City employment that fall within the scope of representation. Modification of the City's Civil Service System is clearly a matter within the scope of representation. Failure to meet and confer in good faith, prior to proposing the amendment to the voters, will leave a successful measure subject to attack through a quo warranto proceeding. *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach*, 36 Cal. 3d 591 (1984).

The recommended proposals affect all of the City's four recognized employee organizations. Under normal circumstances, the Management team might have sufficient time to fulfill its obligation to meet and confer in good faith within the limited time remaining. However, at the present time, the two recommendations are not only inconsistent with each other, but neither has been specifically framed. Furthermore, there has been no discussion concerning the nature of the personnel system which will replace the current complex statutory scheme. Having just completed a rather difficult meet and confer season, the employee groups may very well take an adverse view of returning to the bargaining table under these conditions. They may very well object that the scope of the proposals is so broad that they can not be discussed properly in the time remaining.

For example, under the STEP and CHANGE2 proposals, the following Charter sections, at a minimum, would need to be amended or repealed:

- Section 28. DUTIES OF THE CITY MANAGER
- Section 37. PERSONNEL DIRECTOR
- Section 41.1. SALARY SETTING COMMISSION
- Section 57. POLICE DEPARTMENT
- Section 58. FIRE DEPARTMENT
- Section 115. CIVIL SERVICE COMMISSION
- Section 116. PERSONNEL DIRECTOR
- Section 117. UNCLASSIFIED AND CLASSIFIED SERVICES
- Section 118. RULES
- Section 120. LIMITATIONS AND CREDITS

Section 121. ELIGIBLE LISTS  
Section 122. APPOINTMENTS  
Section 124. PROMOTIONS  
Section 125. SERVICE REGISTER  
Section 130. COMPENSATION ESTABLISHED  
Section 131. FALSE STATEMENT BY APPLICANT  
Section 133. FRAUD ON CIVIL SERVICE

In addition, Municipal Code sections 23.0101 through 23.1801 would become inoperative upon the effective date of the proposed amendments. Finally, the entire Personnel Manual of The City of San Diego would need to be revised and readopted by whatever authority eventually replaces the Civil Service Commission.

Another factor complicating this process is that the City has just entered into Memoranda of Understandings (MOUs) with the recognized employee organizations that expire on June 30, 1995. Any revision to the Civil Service System that adversely impacts these agreements would necessarily have to become effective after the term of the agreements or the City will be in breach of the MOUs.

It may be possible for the employee organizations to waive the right to meet and confer, but that is highly unlikely. It is also just as unlikely that the necessary language for so many Charter amendments could be prepared in time for placement on the November ballot. As I expressed to the City Manager on May 25, 1994, the STEP recommendations impact more than Sections 115 and 116 of the Charter. I also indicated that it would take significant legal resources to properly prepare Charter language to amend or repeal a Civil Service System that is so interwoven in the Charter and Municipal Code.

While we stand ready to begin such an extensive project, it is not reasonable to believe that these proposals will be ready in time for the November ballot.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Assistant City Attorney

JMK:SHS:js:301:(x043.2)

ML-94-61

TOP

TOP